
CANADIAN BROADCAST STANDARDS COUNCIL

NATIONAL SPECIALTY SERVICES PANEL

CablePulse 24 re a *CityNews* report (“Attempted Burglary”)

(CBSC Decision 06/07-1408)

Decided November 29, 2007

R. Cohen (Chair), T. Rajan (Vice-Chair, Public), E. Duffy-MacLean, M. Hogarth,

V. Houle, G. Phelan

THE FACTS

During the 6:00 pm *CityNews* broadcast of July 25, 2007, CablePulse 24 aired a report about an attempted residential burglary that had been thwarted by the owner of the home. With the caption “11:25 am, Hambly Ave.”, the report began with footage of a group of police officers and paramedics standing around a residential yard. A female officer, pointing upwards, was heard to ask, “From up there or here? This one?” The viewer then saw various video images of a man lying on the ground. The voice-over by CP24 anchor Mark Dailey was as follows:

This suspected burglar’s escape was not to be in the Beaches this morning. He climbed onto a second floor deck, but had to turn tail and run. He busted a leg when he hit the ground.

That was followed by an interview with a woman, identified as a neighbour. She was filmed from inside her house standing by a window through which one could see the police officers and paramedics attending to the injured man. She said:

Fortunately Joel was home and, uh, took a run at him and he tried to get away and fell. Wish it would happen to all robbers [laughs].

The report then showed three still photographs, all of which were taken from the vantage point of the second-floor deck of the nearly burgled home, one storey above

the ground-level scene. The first depicted the bungling burglar lying on the ground holding his leg, aided by one male in uniform while another uniformed man looked on. The second photo was a close-up of the man on the ground holding his leg. The last was of the injured malfeasant lying on the ground, still holding his leg but in the company of one of the uniformed men nearby.

Mark Dailey then said

The owner of the house near Queen and Woodbine didn't have to use any force to keep the suspect there until police and paramedics arrived. Police had to wait for the suspect to be treated in hospital before they could book him. That's it from the streets for now, Gord.

The individual who had taken the photographs, the owner of the targeted premises, objected to their use in the report without the broadcaster either obtaining his permission or crediting him. Prior to contacting the CBSC, the photographer complained directly to the station on July 31. He outlined his concerns, in part, as follows (the full text of all correspondence can be found in the Appendix):

I am writing to you regarding your news broadcast on Wednesday, July 25th, 2007, during which your organization violated my intellectual property rights.

The story in question concerned a mid-day break-in at my home in Toronto's Beaches that same day while I was at home. In his flight, the would-be burglar fell from my second-storey deck and broke his leg. He was soon apprehended by the police. One of your cameramen responded to the scene though I refused to give him an interview. Later, he returned accompanied with an interviewer [...] and again, I refused to provide them with content for your broadcast.

The story that was broadcast on CityTV and CP24 (and presumably streamed on CP24.com, as well) included my photographs of the suspect as he lay on the ground below. The material was stolen from my Flickr site without my permission and without crediting me, for commercial use and your sole financial gain.

[...] All of my photography is copyrighted, with all rights reserved by me.

As the director of news programming for CityTV and CP24, I am appealing first to you in finding a resolution in this unfortunate situation [...].

The Director of News Programming responded on August 2:

I have reviewed the material that was broadcast. As well, I have spoken to the reporter and cameraperson, who were on scene following the residential robbery. Both employees have provided a detailed account of the day's events. They clearly recall the conversations with you, and while you declined an on-camera interview, you freely provided your business card, Flickr profile information and you verbally gave permission for the use of the photograph.

You have suggested in your letter below that our story was broadcast for "financial gain". This statement is completely false. Our shows contain material and information that we believe in very strongly; stories that are very important to Torontonians. Canadian

copyright law recognizes that third party materials like photos may be used for the purposes of news reporting. It was in that context that we used this photo.

Dissatisfied with that correspondence, the complainant wrote to the CBSC on August 10:

I am appealing to you for assistance with a grievance I have with a local broadcaster. My concerns include their violation of my intellectual property rights and their violation of their own code of ethics.

The program in question was a news broadcast which aired on Wednesday, July 25th, 2007, on CP24 at about 18:08. The story recounted a mid-day break-in at my home in Toronto. I was working from home at the time and confronted the burglar. In his flight, he misstepped off my second-floor deck and fell, breaking his leg. While waiting for the police and ambulance to arrive, I took photographs of the suspect which I later posted on my photography website, hosted on the Flickr website [...]. Two of those photos were broadcast on CP24 without my permission and without crediting me as the source of those photos.

[...]

I contacted the director of news programming for Citytv/CP24 [...] with my complaint. Her response did not deal with the situation satisfactorily. [...]

My original complaint [...] concerned their use of my photography without my permission and without giving me credit for my work. [The Director of News Programming] replied that I gave her employees verbal permission to use my photographs, a claim I maintain is untrue. There had been some discussion with her staff that day on the possible use of my photography but we never reached an agreement. The conversation was interrupted when I received a phone call after which -- about a minute later -- the Citytv employees has [*sic*] left my property, effectively terminating any further discussion. [The Director of News Programming] also argues that by freely providing her cameraman with my business card and Flickr profile information -- which is included on the card -- is indicative that they had my permission to use my photography for their broadcast. A business card is nothing more than a business card. It was given out should they want to contact me at a later date to discuss possible use of my photography, not to signify that we had an agreement already.

However, this issue of permission appears to be a non-issue after [the Director of News Programming] informed me in her reply that, in her words, "Canadian copyright law recognizes that third party materials like photos may be used for the purposes of news reporting." I researched this claim and found the full clause of the *Copyright Act* to which she was referring. [...]

From the *Copyright Act*:

29.2 Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,

- (ii) performer, in the case of a performer's performance,
- (iii) maker, in the case of a sound recording, or
- (iv) broadcaster, in the case of a communication signal.

In their broadcast, they did not mention me or my website as the source of the photographs in question, and therefore I maintain that my copyrights have been violated by Citytv/CP24. Furthermore, the broadcaster has also violated their industry's *Code of Ethics* as proscribed by the RTNDA [...] and endorsed by you, the CBSC [...]. The *RTNDA Code of Ethics* states, "Professional electronic journalists should clearly disclose the origin of information and label all material provided by outsiders."

[...]

In retribution, I seek only to reinstate what is my right. The broadcaster should, on air, make a retraction and a statement attributing credit for my intellectual property back to me, to appear on every channel and in every media where they broadcast my uncredited work with exposure to an expected viewership comparable to that which viewed the original broadcast(s) of my uncredited photos. Also, I deserve a personal apology from the broadcaster for their violations of my copyright.

[...]

The broadcaster responded a second time to the complainant on September 6:

As you know, I have previously reviewed this situation when your concerns, in email form, were sent to the newsroom on July 31st. After a brief investigation, I personally responded within two days. I have once again, spoken to the cameraperson and reporter on scene following that day's robbery. As well, I have reviewed the day's broadcasts on CP24, our 24-hour news channel and the CityNews shows on CityTV.

While your photos were not used [...] on that evening's newscast, two photos were broadcast on CP24. The photos were included in a shortened version of this news event because the producer was informed that you had granted verbal permission for their use. To reiterate, you freely provided your business card and Flickr profile information. And while I agree that a business card does not indicate permission, the fact that you granted verbal permission with three CityNews personnel (reporter, cameraperson and intern) present, indicates quite clearly that you allowed these photos to be used in the broadcast.

With all due respect, we are not "thieves" as you have suggested on the internet. CityNews is very proud of our relationship with the viewing audience. We respond quickly to story suggestions and complaints. We encourage viewers to interact with us and participate in the news gathering process. We believed that you freely participated in that process and we're sorry that you misunderstood, but we do not believe that an on-air retraction is warranted.

The complainant remained dissatisfied with CablePulse 24's approach and filed his Ruling Request on September 13 with the following letter:

I have reviewed the response and I am not satisfied that the matter has been resolved. Following are the main points that are leading me to submit a ruling request.

** Violations **

The two main charges in my initial complaint involved violations of my copyrights and violations of their industry's code of ethics.

The broadcaster responded to the copyright violations claiming that I had provided them with verbal permission to use my photography in their broadcast. I emphatically deny having provided such permission. However, the issue of permission was abandoned when it was explained to me by the broadcaster that the *Copyright Act* allows them the defence of fair dealing in the use of my work when used for the purposes of news reporting -- on the condition that I be granted credit for my work. I did not receive that credit.

My complaint also concerned Citytv's use of material from an outside source (my photographs) that, according to the *RTNDA Code of Ethics*, must be labeled as such with disclosure of the origin of the outsider material. Once again, this is a professional obligation that they did not fulfill. When the broadcaster withheld my right to credit, they also violated their industry's code of ethics. On that charge, the broadcaster avoided making any comment, and effectively ignored a large bulk of my concerns.

**** Inaccuracies ****

In their response, Citytv's director of news programming [...] focused solely on her assurance that I provided her employees with verbal permission. She says that three of her employees were witness to my granting permission. However, I only met two Citytv employees on the day in question: the cameraman who arrived early at the scene; about an hour later, the cameraman returned with an on-air personality [...] to request -- again, and in vain -- an on-camera interview. There was never a third person present, presumably the intern the broadcaster claims was also there. (In my first contact with [the Director of News Programming, which I included in my original complaint, she recounts how she consulted her two employees for a full account of the day's events. Where does this claim of a third employee stem from, and why?])

**** Accounting of Occurrences ****

[...]

They do, however, admit that my photos were used in the "shortened" version of the news event that was broadcast on CP24. This baffles me since a shortening normally suggests a reduction in material, and not the inclusion of new material. The broadcaster also did not provide an accounting of the frequency of infractions in the CP24 broadcast cycle, nor of the live video stream that appears on their website -- www.citynews.ca -- which I requested.

Citytv concluded their response with the assertion that I "freely participated" in the process of news gathering (note: I refused to provide them with an on-air interview multiple times) and they're sorry that I "misunderstood." In the end, it appears to me that the broadcaster is not acting in good faith.

THE DECISION

The National Specialty Services Panel examined the complaint under Article 11 regarding Intellectual Property of the RTNDA -The Association of Electronic Journalists of Canada *RTNDA Code of (Journalistic) Ethics*, which reads:

Plagiarism is unacceptable. Broadcast journalists will strive to honour the intellectual property of others, including video and audio materials.

The Panel Adjudicators read all of the correspondence and reviewed a tape of the report in question. The majority of the Panel (G. Phelan dissenting) concludes that the broadcast did violate the aforementioned Code article.

Fair Dealing

This case turns on the Panel's appreciation of Article 11 of the *RTNDA Code of (Journalistic) Ethics*. It should also be noted that this is the first occasion on which a CBSC Panel has been called upon to deal with this Article. The Panel begins by acknowledging that Article 11 differs in its approach from the corresponding text of the *Code of Ethics* of the related entity, the American RTNDA – The Association of Electronic Journalists, which deals with the same issue, namely, the identification of copyrighted works, differently. Under the heading "Truth", that Code provides: "Professional electronic journalists should [...] [c]learly disclose the origin of information and label all material provided by outsiders." While the Canadian RTNDA did not choose *that* approach to resolution of the issue of usage of copyrighted material when it revised its Code in 2000, the Panel considers that the Canadian *Code of (Journalistic) Ethics* is of a similar effect in responding to the issue raised by the challenged newscast.

Article 11 begins with the underlying and unqualified principle that "Plagiarism is unacceptable." That absolute statement is followed by what the Panel sees as a tempering sentence, which reads "Broadcast journalists will strive to honour the intellectual property of others, including video and audio materials." The question for it to determine is the extent of the *striving*. Does it mean that a broadcaster can "try really hard" and fail? Or does it mean that a broadcaster may, by certain actions, mitigate the absolute prohibition included in the first sentence of the Article? The Panel considers that the latter interpretation is the only reasonable one. It may be that there will be circumstances which do not permit a broadcaster to *know*, even with the exercise of due diligence, the identity of a creator of video or audio materials. That is not, of course, the case at hand. The broadcaster knew full well the identity of the photographer whose still shots were used in the news report, and the Panel's decision should be read as being limited to such an instance. It should also be understood that this decision does not purport in any way to be dealing with litigious or pecuniary issues.

The Panel begins with an appreciation of the purpose of copyright, namely, the encouragement of creative work by assuring the protection of the rights of the creator, in this case, of the photographs. It also understands that, for the purpose of *news reporting* (and other matters not of relevance here), an exception exists to the restrictive

demands of copyright protection. It is that exception that falls within the category of “fair dealing”. The exception ought not, however, to be misunderstood; it does not provide the news reporting entity with an absolute exemption from copyright rules, or a free ride. It would be more accurate to observe that the use of copyright material for news reporting purposes opens the door for the user. But it is not flung open. Those who wish to pass through it must do so *fairly*. Indeed, fairness is the essence of the exception to the total protection that copyright would otherwise afford. And the definition of what is fair, what, in terms of the RTNDA Code, will “honour the intellectual property of others”, must, at the very least, and consistent with Section 29.2 of the *Copyright Act*, mention the source, including the name of the author, of the photographic work. It seems to the Panel to be the opposite of honouring the intellectual property of a creator to take his or her work without acknowledgment and to, in effect, pass that work off as the broadcaster’s own. Although that may not be the *intention* of the broadcaster, it is the inevitable effect of the failure to accord credit, particularly where, as in the present matter, the identity of the photographer was known.

Insofar as the oblique discussion of the granting of permission is concerned, the Panel reiterates its frequently stated position that the CBSC is not customarily a finder of fact. Consequently, it does not take a formal position on the differing versions of the complainant and the broadcaster as to whether or not permission *was* granted. Nor does it consider that it needs to do so, since it finds that, unless the broadcaster is in a position to establish that permission was granted *and* that that permission extended to the *non-inclusion of credit* for the creator, the use made of photographic works for purposes of Article 11 of the *RTNDA Code of (Journalistic) Ethics* would be unfair.

The Panel concludes that the failure of CablePulse 24 to establish in any way that permission was granted by the photographer to *not* provide credit to the complainant for its use of his photographs, and the subsequent failure to provide the necessary credit to a known photographer constitutes a breach of Article 11 of the *RTNDA Code of (Journalistic) Ethics*.

G. Phelan dissenting

For me, this decision turns on two points. The first is the issue of permission and the second is the intent of Article 11 of the *RTNDA Code of (Journalistic) Ethics*.

On the first issue, I begin with the assumption that, as the broadcaster’s Director of News Programming has stated, CP24 believes it *did* obtain the permission of the photographer prior to running the pictures he took of the fallen would-be burglar. I understand that the complainant did not consider that he provided that permission. It may be unfair, in the absence of evidence or further inquiry, to choose to believe one over the other. I take the middle ground. It is essential to understand that the news

business is *timely* in nature. It waits for no- one. It has no time to waste. I consider it reasonable to assume that, in the discussions between the broadcaster and the complainant/photographer and the provision by the near-burglary-victim of his business card, there *was* an understanding regarding the photographs. It did take six days for the photographer to make the initial complaint to the station. I consider it fair dealing for the broadcaster to have used the photos, with permission, not for blatant profit motives, but to illustrate a breaking *television* news story. I do believe the photographer has raised some interesting points that I recommend be addressed by RTNDA in any further assessment of its *Code of Ethics*.

As to my second reason for dissenting, it is clear to me that, when the *RTNDA Code of (Journalistic) Ethics* was amended in 2000 to include Article 11, the Canadian News Directors expressly decided *not* to include a provision equivalent to that cited above from the *RTNDA International Code of Ethics*. The opportunity to do so was, of course, present. It was not taken by RTNDA Canada. The Canadian entity determined that it would deal with the issue of plagiarism in a more restrictive way. It pulled no punches. It unequivocally declared plagiarism “unacceptable”. I read the second sentence of the Article as nothing more or less than the elaboration of the principle laid down in the first sentence, namely, that broadcasters “will strive to honour the intellectual property of others.” In the choice of the word “strive”, they have left the door open a crack; there is an acknowledgement that, in the speed of news gathering and reporting, there may even be an occasional miss by well-intentioned broadcast journalists. The principle is that plagiarism is unacceptable, but that the odd inadvertent slip-up may occur. In my view, the Article has nothing to do with the provision of credit and I disagree with the interpretation of that point by my fellow Adjudicators. I would find no breach of Article 11 by CablePulse 24.

Broadcaster Responsiveness

In all CBSC decisions, the Council’s Panels assess the broadcaster’s responsiveness to the complainant. In the present instance, the Panel finds that the willingness of the broadcaster’s Director of News Programming to send a couple of responses demonstrated an extra effort. Moreover, she focussed on the precise elements of the complaint and dealt with them in a helpful manner. Although she did not agree with the complainant on either the factual underpinnings of the situation or his interpretation of the applicable legislative or codified provisions, which did not constitute a satisfactory reply from the complainant’s perspective, the broadcaster is never under any obligation to *agree* with the complainant. It is the commitment to dialogue with a complainant who has made the effort to register a concern that is the issue. Not only is there no fault in the difference of perspectives, it is the case that every matter that goes to a Panel for adjudication begins with just such a disagreement between the complainant and the

broadcaster. The Panel considers that CablePulse 24 has fully met its CBSC membership responsiveness responsibilities in this instance.

ANNOUNCEMENT OF THE DECISION

CablePulse 24 is required to: 1) announce the decision, in the following terms, once during prime time within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which the challenged *CityNews* segment was broadcast; 2) within the fourteen days following the broadcasts of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CablePulse 24.

The Canadian Broadcast Standards Council has found that CablePulse 24 breached Article 11 of the Radio-Television News Directors Association – The Association of Electronic Journalists' *Code of Ethics* in its broadcast of a news report of a bungled burglary on July 25, 2007. As a part of its coverage of the story, CP24 included three still photographs of the injured burglar without providing any credit to the photographer, whose identity was known to the broadcaster. By failing to provide that accreditation, the broadcaster has failed to honour the intellectual property rights of the photographer, contrary to the provisions of Article 11 of the *RTNDA Code of (Journalistic) Ethics*.

This decision is a public document upon its release by the Canadian Broadcast Standards Council.

APPENDIX

CBSC Decision 06/07-1408 CablePulse 24 re *CityNews* report (“Attempted Burglary”)

The Complaint

The CBSC received the following complaint via e-mail on August 10, 2007:

Dear CBSC,

I am appealing to you for assistance with a grievance I have with a local broadcaster. My concerns include their violation of my intellectual property rights and their violation of their own code of ethics.

The program in question was a news broadcast which aired on Wednesday, July 25th, 2007, on CP24 at about 18:08. The story recounted a mid-day break-in at my home in Toronto. I was working from home at the time and confronted the burglar. In his flight, he misstepped off my second-floor deck and fell, breaking his leg. While waiting for the police and ambulance to arrive, I took photographs of the suspect which I later posted on my photography website, hosted on the Flickr website (<http://www.flickr.com/photos/uwajedi/>). Two of those photos were broadcast on CP24 without my permission and without crediting me as the source of those photos.

The photographs in question can be found here:

No.1 -- <http://www.flickr.com/photos/uwajedi/897102844/> -- as seen in their broadcast: http://farm2.static.flickr.com/1211/1072403003_4f3103c26f_b.jpg

No.2 -- <http://www.flickr.com/photos/uwajedi/896242613/> -- as seen in their broadcast: http://farm2.static.flickr.com/1429/1072395151_da894b2e3b_b.jpg

I contacted the director of news programming for Citytv/CP24, Ms. [T. C.], with my complaint. Her response did not deal with the situation satisfactorily. (Our correspondence has been included at the bottom of this letter.)

My original complaint to [the Director of News Programming] concerned their use of my photography without my permission and without giving me credit for my work. [The Director of News Programming] replied that I gave her employees verbal permission to use my photographs, a claim I maintain is untrue. There had been some discussion with her staff that day on the possible use of my photography but we never reached an agreement. The conversation was interrupted when I received a phone call after which -- about a minute later -- the Citytv employees has [sic] left my property, effectively terminating any further discussion. [The Director of News Programming] also argues that by freely providing her cameraman with my business card and Flickr profile information -- which is included on the card -- is indicative that they had my permission to use my photography for their broadcast. A business card is nothing more than a business card. It was given out should they want to contact me at a later date to discuss possible use of my photography, not to signify that we had an agreement already.

However, this issue of permission appears to be a non-issue after [the Director of News

Programming] informed me in her reply that, in her words, "Canadian copyright law recognizes that third party materials like photos may be used for the purposes of news reporting." I researched this claim and found the full clause of the *Copyright Act* to which she was referring. (<http://www.cb-cda.gc.ca/info/act-e.html#29.2>)

From the *Copyright Act*:

29.2 Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,
 - (ii) performer, in the case of a performer's performance,
 - (iii) maker, in the case of a sound recording, or
 - (iv) broadcaster, in the case of a communication signal.

In their broadcast, they did not mention me or my website as the source of the photographs in question, and therefore I maintain that my copyrights have been violated by Citytv/CP24. Furthermore, the broadcaster has also violated their industry's *Code of Ethics* as proscribed by the RTNDA (<http://www.rtna.org/ethics/coe.shtml>) and endorsed by you, the CBSC (<http://www.cbcs.ca/english/codes/cabethics/ethics.htm>). The *RTNDA Code of Ethics* states, "Professional electronic journalists should clearly disclose the origin of information and label all material provided by outsiders."

The format of the CP24 channel repeats news stories throughout the day. It is a safe assumption that my uncredited photography was repeatedly broadcast on CP24 numerous times over the next several hours. The related website www.citynews.ca also streams the CP24 live broadcast on the web. As well, I have a contact in the Flickr community who confirms my images were broadcast on the evening news on the main Citytv station. This complaint warrants an accounting by the broadcaster of the number of times these infractions occurred, and where they occurred beyond the sole incident that I personally observed.

In retribution, I seek only to reinstate what is my right. The broadcaster should, on air, make a retraction and a statement attributing credit for my intellectual property back to me, to appear on every channel and in every media where they broadcast my uncredited work with exposure to an expected viewership comparable to that which viewed the original broadcast(s) of my uncredited photos. Also, I deserve a personal apology from the broadcaster for their violations of my copyright.

I appreciate any assistance or mediation your office can offer me in finding a satisfactory resolution. Though I have tried to be as detailed as possible, if you should require any further information please do not hesitate to contact me.

As mentioned above, the complainant provided the correspondence he had had with the station prior to filing his CBSC complaint. He had sent the following e-mail to the broadcaster on July 31:

I am writing to you regarding your news broadcast on Wednesday, July 25th, 2007, during

which your organization violated my intellectual property rights.

The story in question concerned a mid-day break-in at my home in Toronto's Beaches that same day while I was at home. In his flight, the would-be burglar fell from my second-storey deck and broke his leg. He was soon apprehended by the police. One of your cameramen responded to the scene though I refused to give him an interview. Later, he returned accompanied with an interviewer, Mr. [D.], and again, I refused to provide them with content for your broadcast.

The story that was broadcast on CityTV and CP24 (and presumably streamed on CP24.com, as well) included my photographs of the suspect as he lay on the ground below. The material was stolen from my Flickr site without my permission and without crediting me, for commercial use and your sole financial gain.

Flickr -- a subsidiary of Rogers Media, of which you will also be a part pending CRTC approval -- is not a stock photo site. All of my photography is copyrighted, with all rights reserved by me.

As the director of news programming for CityTV and CP24, I am appealing first to you in finding a resolution in this unfortunate situation. If this matter is beyond the scope of your position, I would appreciate if you would forward my concerns to the appropriate person or department.

Your prompt reply concerning this matter would be greatly appreciated.

The station responded on August 2:

As the director of news programming for Citytv and CP24 I will respond to your letter dated Tuesday July 31st, 2007. I have reviewed the material that was broadcast. As well, I have spoken to the reporter and cameraperson, who were on scene following the residential robbery. Both employees have provided a detailed account of the day's events. They clearly recall the conversations with you, and while you declined an on-camera interview, you freely provided your business card, Flickr profile information and you verbally gave permission for the use of the photograph.

You have suggested in your letter below that our story was broadcast for "financial gain". This statement is completely false. Our shows contain material and information that we believe in very strongly; stories that are very important to Torontonians. Canadian copyright law recognizes that third party materials like photos may be used for the purposes of news reporting. It was in that context that we used this photo.

Once again you did provide verbal permission and the accusations that you are making on FLICKR suggesting that Citytv News are "the real thieves" are false and inappropriate.

I hope that I have addressed your concerns.

Broadcaster's Response

Following the filing of the official complaint with the CBSC, the CP24 responded to the complainant again on September 6:

Your recent correspondence with the Canadian Broadcast Standards Council (CBSC File

C06/07-1408) has been directed to our newsroom and as the director of news programming I will address your concerns.

As you know, I have previously reviewed this situation when your concerns, in email form, were sent to the newsroom on July 31st. After a brief investigation, I personally responded within two days. I have once again, spoken to the cameraperson and reporter on scene following that day's robbery. As well, I have reviewed the day's broadcasts on CP24, our 24-hour news channel and the CityNews shows on CityTV.

While your photos were not used in [the reporter]'s story on that evening's newscast, two photos were broadcast on CP24. The photos were included in a shortened version of this news event because the producer was informed that you had granted verbal permission for their use. To reiterate, you freely provided your business card and Flickr profile information. And while I agree that a business card does not indicate permission, the fact that you granted verbal permission with three CityNews personnel (reporter, cameraperson and intern) present, indicates quite clearly that you allowed these photos to be used in the broadcast.

With all due respect, we are not "thieves" as you have suggested on the internet. CityNews is very proud of our relationship with the viewing audience. We respond quickly to story suggestions and complaints. We encourage viewers to interact with us and participate in the news gathering process. We believed that you freely participated in that process and we're sorry that you misunderstood, but we do not believe that an on-air retraction is warranted.

If you would like to discuss this matter further, you can call me directly at, [(###) ###-####] ext [####].

Additional Correspondence

The complainant filed his Ruling Request on September 13 with the following letter:

Dear CBSC,

In response to my complaint -- CBSC File C06/07-1408 -- I received an email from Citytv on Thursday, September 6, 2007. I have reviewed the response and I am not satisfied that the matter has been resolved. Following are the main points that are leading me to submit a ruling request.

**** Violations ****

The two main charges in my initial complaint involved violations of my copyrights and violations of their industry's code of ethics.

The broadcaster responded to the copyright violations claiming that I had provided them with verbal permission to use my photography in their broadcast. I emphatically deny having provided such permission. However, the issue of permission was abandoned when it was explained to me by the broadcaster that the *Copyright Act* allows them the defence of fair dealing in the use of my work when used for the purposes of news reporting -- on the condition that I be granted credit for my work. I did not receive that credit.

My complaint also concerned Citytv's use of material from an outside source (my photographs) that, according to the *RTNDA Code of Ethics*, must be labeled as such with disclosure of the origin of the outsider material. Once again, this is a professional obligation

that they did not fulfill. When the broadcaster withheld my right to credit, they also violated their industry's code of ethics. On that charge, the broadcaster avoided making any comment, and effectively ignored a large bulk of my concerns.

**** Inaccuracies ****

In their response, Citytv's director of news programming, [T. C.], focused solely on her assurance that I provided her employees with verbal permission. She says that three of her employees were witness to my granting permission. However, I only met two Citytv employees on the day in question: the cameraman who arrived early at the scene; about an hour later, the cameraman returned with an on-air personality, Mr. [D.], to request -- again, and in vain -- an on-camera interview. There was never a third person present, presumably the intern the broadcaster claims was also there. (In my first contact with [the Director of News Programming], which I included in my original complaint, she recounts how she consulted her two employees for a full account of the day's events. Where does this claim of a third employee stem from, and why?)

**** Accounting of Occurrences ****

Finally, I had asked in my original complaint for the broadcaster to take account of the number of times the infractions in question took place. The broadcaster did not fulfill that request. In fact, the broadcaster will only admit to the sole occurrence to which I was a witness, despite my having a witness who saw my photos on the Citytv evening broadcast. (The broadcaster claims my photos were not used in that broadcast.)

They do, however, admit that my photos were used in the "shortened" version of the news event that was broadcast on CP24. This baffles me since a shortening normally suggests a reduction in material, and not the inclusion of new material. The broadcaster also did not provide an accounting of the frequency of infractions in the CP24 broadcast cycle, nor of the live video stream that appears on their website -- www.citynews.ca -- which I requested.

Citytv concluded their response with the assertion that I "freely participated" in the process of news gathering (note: I refused to provide them with an on-air interview multiple times) and they're sorry that I "misunderstood." In the end, it appears to me that the broadcaster is not acting in good faith.

I would be very grateful if you could review the matter on our behalf.